of that licence. It was clearly an essential preliminary part of the case for the prosecution to prove that he was, in fact, the holder of the said licence. This could, and should, have been done in one of two ways, either by production of the original licence, or by serving upon the responsent, in accordance with the provisions of section 66 of the Evidence Ordinance, a notice to produce the original document. If, and only if, the respondent had failed to comply with the notice to produce the original document, could secondary evidence as to the contents of that document become admissible. In the absence of the proper production of the licence or admissible secondary evidence as to its contents, there was, therefore, no evidence before the learned Magistrate that the respondent was a person licensed under the Enactment and the learned Magistrate, in my view, acted perfectly properly in dismissing the charges.

There is one further matter to which I would refer. The slipshod manner in which this case appears to have been investigated, and certainly the manner in which it was conducted and presented before the Court, left a great deal to be desired. The Government Chemist gave evidence that certain samples produced to him by a Revenue Officer — R.O. 589 — were rubber within the meaning of the Rubber Supervision Enactment. He returned these samples to another Revenue Officer — R.O. 822. Presumably, these samples purported to be samples of the rubber, found in the van, which formed the subject matter of the Charge. Presumably, it was on that assumption that they were put in as exhibits in the case. Yet neither the Revenue Officer who handed the rubber to the Chemist, nor the Revenue Officer who received it back from him, were called as witnesses. The failure to complete the chain of evidence as to the seizure, retention, identification and production of the rubber from the time it was first seized to the time it was produced in Court left it open to the grave criticism — as was quite properly made in this case during the trial — that there was no adequate or sufficient evidence that the rubber examined by the Chemist, or produced in Court, was, in fact, a specimen or part of the rubber originally seized.

It is of crucial importance that Police and Customs Officers investigating and/or prosecuting cases should appreciate the necessity of ensuring an unbroken chain of evidence as the retention and custody of an exhibit from the moment it is first seized to the time it is produced in Court.

It was for these reasons that I dismissed this appeal.

Appeal dismissed.

PUBLIC PROSECUTOR v. PATANI MOTORS CO. LTD.

[A. Cr. J. (Hill J.) March 9, 1957]

[Alor Star — Kedah Criminal Appeal No. 3 of 1957]

Dangerous Drugs Ordinance, 1952, s. 30(7) — Forfeiture of vehicle used in commission of offence — Vehicle not liable to forfeiture when used in breach of agreement.

A car used in the commission of an offence under the Dangerous Drugs Ordinance, 1952, will not be liable to forfeiture against the hirer when the agreement for the hire-purchase of the car contains a provision that the use of the car in contravention of the law by the hire-purchaser constitutes a breach of the agreement, and such use was without the knowledge or consent of the hirer.

Cases referred to:—

(1) *Loke Tham Chuan v. Public Prosecutor* (1955) M.L.J. 3.

(2) *Jelks v. Hayward* (1905) 2 K.B. 460.

MAGISTRATE'S CRIMINAL APPEAL.

B. Sheldon (Federal Counsel) for the appellant.

Ismail Khan for the respondents.

Hill J. : — On 24th November 1956 Wan Adam bin Haji Wan Jusoh was convicted in the Sessions Court, Alor Star, of an offence of being in possession of opium in motor car No. K. 5739. Wan Adam had purchased the car on a Hire Purchase agreement with Patani Motors and on the day of his conviction still owed a balance of $1,800.

When an application was made before the President on 11th December 1956 for the forfeiture of the car the application was dismissed as the learned President held that Patani Motors were the owners. Against this decision the Public Prosecutor has appealed.

I think it is advisable to set out in full the written judgment of the learned President. It was as follows :—

The application for forfeiture of Car K. 5739 arose out of Criminal Trial No. CSP. 5/56, in which the two accused were found by Revenue Officers in possession of opium concealed in the boot of the abovementioned car. The two accused were convicted and are now serving sentence in default of payment of the fine imposed.

It is not disputed by both Applicant and Respondent that the car was, at the time of the arrest of the two accused in the abovementioned case, in their custody by virtue of a hire purchase agreement between the male accused Wan Adam and the Respondent Company, Patani Motors Co., Ltd. Furthermore, the application revolves around the meaning of the word "owner" in section 30(7) of the Dangerous Drugs Ordinance and failure of the Respondent Company to establish its ownership within the meaning of section 30(7) would in itself be sufficient to lead to the forfeiture — since the "owner" would then be the accused, Wan Adam.

Buhagiar J. in Loke Tham Chuan v. Public Prosecutor[1] exhaustively discussed the meaning of "possession" and "ownership". I would quote that part of his judgment in which he dealt with Section 30(7) . . . . "the proper interpretation to be given to the words "is entitled to possession" is, in my opinion, "has the right

to possess". According to this interpretation a person who buys a car on the hire-purchase system has, as long as the terms of the agreement are complied with, the right to possess the car; so also has a person who hires a car for a period of time for the purpose of using it as a taxi or a pawnee or a bailee for a definite period of time."

I would venture to say that I cannot agree more with this interpretation. Wan Adam lost the right to "possess" and was therefore no longer "entitled to possess" the car when in breach of paragraph 4 of the hire-purchase agreement Ex. P. 3 he knowingly used it to convey opium. Para. 4 of the agreement reads "The Hirer, during the continuance of the hiring will pay all fines etc. . . . . and will not during the hiring use or permit to be used the vehicle in contravention of any statute, ordinance, Enactment or regulation for the time being in force, or in any manner by reason of which the vehicle may become liable to seizure, confiscation or forfeiture or otherwise in any way contrary to law . . . ."

Para. 7 of the Agreement enables the Respondent firm "to terminate hiring and resume possession of the vehicle." In my opinion the male Accused Wan Adam lost his "right to possess" the car the very instant he did an act in breach of the agreement, quite regardless of the fact that the car remained in his "constructive" possession. As the respondent company could never have had any knowledge, or consented to or connived at the commission of the offence, by virtue of its being a corporate body, I held that the application must fail and car K. 5739 should be returned to the respondent company."

It would seem therefore that the point or issue I have to decide is the weight to be placed on § 7 of the Hire Purchase Agreement and its bearing on the meaning of the word "owner" in section 30(7) of the Dangerous Drugs Ordinance.

I was referred to the case of *Jelks v. Hayward*[2] which is mentioned at page 72 in *Earengey* on Hire Purchase. In that case furniture was let under a hire purchase agreement which contained a clause allowing the owners, without previous notice, to determine the hiring and retake possession if the furniture should at any time be seized or taken in execution. It was taken in execution by the high bailiff of a County Court under a judgment against the hirer: the owners did not discover this in time to proceed under section 156 of the County Courts Act, 1888. The furniture was sold under the execution, and on the day after the sale the owners gave notice of their claim to the proceeds. In the interpleader proceedings the execution creditors admitted the owners' title to the proceeds, and the owners then claimed, and recovered, damages for conversion against the high bailiff. It was held that the hirer's interest in the goods ceased on the seizure, and the owners thereupon became entitled to the possession under the agreement. The sale and delivery by the high bailiff, which took place after this, was therefore an act of conversion, and it was none the less so because the owners did not know of the execution or given notice of their rights. Had the agreement merely given the owners the right to terminate on notice, they would not have become entitled to the possession until the notice was given; and as they did not know of the execution until after the sale, this notice would not have been in time to make the sale and the delivery thereunder an act of conversion. The Court disagreed with the suggestion that the option of purchase made any difference to the position.

In *Loke Tham Chuan v. Public Prosecutor*[1] Buhagiar J. held that the meaning of the word "possession" in section 30(7) of the Dangerous Drugs Ordinance must be considered from the aspect of the Civil Law. As the learned Judge then pointed out "possession" is a word of ambiguous meaning and its legal senses do not coincide with the popular sense and that "possession", "right of possession", "legal possession", "possession in law", right to possession", "constructive possession", "physical possession" are phrases occurring in reports and in books and some of them are often used interchangeably.

The phrase used in section 30(7) is that "owner of a conveyance means the person entitled to the possession of the same immediately before seizure."

If therefore in this appeal "possession" is considered from the aspect of Civil Law it seems clear on the authority of *Jelks v. Hayward*[2] and in conformity with the opinion expressed by Buhagiar J. that in view of the breach by the Hirer of § 7 of the Hire Purchase agreement the person entitled to possession of the motor car immediately before seizure was Patani Motors and that that firm was rightly held to be the owner by the learned President.

In spite of sub-section (2) of section 30 of the Dangerous Drugs Ordinance it may well be that this interpretation of sub-section (7) was not the intention of the Legislature, but if it is the intention that a penal section such as this should deprive citizens of their civil contractual rights that intention should be indicated in clear and unambiguous terms.

I am therefore of opinion that the learned President was right and I accordingly dismiss the appeal.

Appeal dismissed

PUBLIC PROSECUTOR v. V. NEELAKANDAN & ANOR.

[A. Cr. J. (Hill J.) March 9, 1957]

[Alor Star — Kedah Criminal Appeal No. 7 of 1957]

Prevention of Corruption Ordinance, 1950, s. 3(c) — "Intent to deceive" — "Intent to defraud" — Proof.

In an offence punishable under section 3(c) of the Prevention of Corruption Ordinance, 1950, it is only required to show that there was an "intent to deceive".

It is not necessary to show an "intent to defraud", but if such intent to defraud is proved, it would doubtless influence the Court when it came to sentence.